

UNITED STATES PATENT AND TRADEMARK OFFICE

APPLN. NO.: 10/727,729 CONFIRMATION NO.: 2296
APPLICANT: Arthur P. Jost TC/ART UNIT: 2423
FILED: December 04, 2003 EXAMINER: Mark D. Featherstone
TITLE: METHOD AND APPARATUS FOR COST EFFECTIVE CENTRAL
TRANSCODING OF VIDEO STREAMS IN A VIDEO ON DEMAND
SYSTEM

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PRE-APPEAL BRIEF REQUEST FOR REVIEW

In response to the Final Office Action mailed from the U.S. Patent and Trademark Office on January 23, 2009, Applicant requests review of the final rejection in the above-identified application. This request is being filed with a Notice of Appeal and required fee. An extension of time is requested and this response is accompanied by the fee required under 37 C.F.R. 1.136(a). The Commissioner is hereby authorized to charge any additional fees which may be required at any time during the prosecution of this application without specific authorization, or credit any overpayment, to Deposit Account No. 50-2117.

No amendments are being filed with this request. The review is requested for the reasons stated in the remarks below.

Status of Claims

Claims 1-30 are pending in the application.

The independent claims are claims 1, 9, 20, and 24.

Claims 1-2, 4, 9-12, 15, 20-21, and 23-27 stand rejected under 35 U.S.C. § 102(c) as being allegedly anticipated by US 20030046704 (Laksono).

Claims 5-8 and 16-19 under 35 U.S.C. § 103(a) stand rejected as being allegedly unpatentable over US 20030046704 (Laksono) in view of US 7020892 (Levesque).

Claims 3, 13-14, 22, and 28-30 stand rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over US 20030046704 (Laksono) in view of US 6996129 (Krause).

Claim Rejections Under 35 U.S.C. § 102(c)

Applicant respectfully traverses the rejection of claims 1-2, 4, 9-12, 15, 20-21, and 23-27. Applicant respectfully submits that Laksono does not anticipate, either expressly or inherently, each and every element as set forth in independent claims 1, 9, 20, and 24.

1. Laksono Fails to Disclose Reserving a Predetermined Amount of Bandwidth to Future Transcoding

Independent claims 1, 20, and 24 recite “reserving [(91)] a predetermined amount of bandwidth in [one or more multiplexers (21-24) of a node group] to future transcoding” and independent claim 9 recites “reserving (91) a predetermined amount of bandwidth in a multiplexer (21-24) to future compression or transcoding,” which are not anticipated either expressly or inherently, in Laksono.

Laksono is directed towards a method for controlling access to a video system based on bandwidth consumption. See Laksono, Abstract. Laksono describes setting up a bandwidth threshold for every connection. At a particular time, if the bandwidth utilization of the connection is below the threshold then the video-on-demand (VOD) server provides the requested video program to the client through the connection. Otherwise, if the bandwidth utilization of the connection exceeds the threshold, then the VOD server provides a list of options to the user. See Laksono, paragraphs [0018] and [0024]. In contrast, Applicant’s independent claims 1, 9, 20, and 24 describe reserving a **predetermined** amount of bandwidth in a multiplexer for **future transcoding**. Laksono reserves bandwidth by setting a threshold for

providing cost-viewing options to the client. Laksono nowhere shows or suggests reserving a **predetermined** amount of bandwidth in a multiplexer for **future transcoding** as described by Applicant's independent claims 1, 9, 20, and 24.

2. Laksono Fails to Disclose Centrally Transcoding After All Unreserved Bandwidth Is Allocated

Independent claims 1, 20, and 24 recite "routing [(93)] one or more subsequent new video [sessions] through [a] central transcoder (15) after all unreserved bandwidth [of a node group] is allocated" and independent claim 9 recites "performing (93) transcoding or compression on one or more new channels after all unreserved bandwidth of the multiplexer (21-24) is allocated," which are not anticipated either expressly or inherently, in Laksono.

Firstly, Laksono does not show or suggest "a central transcoder" as recited by Applicant's independent claims 1, 20, and 24. Therefore, "a central transcoder" is another missing limitation that is not taught by Laksono.

Furthermore, Laksono merely suggests that one of the options from the list provided to the client may be transcoding at increased fee, if the bandwidth utilization exceeds the threshold. Then, depending upon the client's choice, Laksono provides the video program to the client device. See Laksono, paragraph [0021]. In contrast, Applicant's independent claims 1, 20, and 24 describes routing the subsequent video sessions **through a central transcoder after all unreserved bandwidth is allocated** and Applicant's claim 9 describes performing **transcoding or compression on a channel after all unreserved bandwidth of a multiplexer is allocated**. Therefore, Laksono does not teach routing subsequent new video sessions through a central transcoder or performing transcoding on a channel, after all unreserved bandwidth of a node group is allocated as described by Applicant's independent claims 1, 9, 20, and 24.

In view of the foregoing, Applicant respectfully submits that claims 1, 9, 20, and 24 are not anticipated by Laksono, and therefore the rejection of claims 1, 9, 20, and 24 under 35 U.S.C. § 102(c) should be withdrawn. Applicant requests that claims 1, 9, 20, and 24 may now be passed to allowance.

Dependent claims 2, 4, 10-12, 15, 21, and 23, 25-27 depend from, and include all the limitations of independent claims 1, 9, 20, and 24. Therefore, Applicant respectfully requests

reconsideration of dependent claims 2, 4, 10-12, 15, 21, and 23, 25-27 and requests the withdrawal of the rejection.

Claim Rejections Under 35 U.S.C. § 103(a)

As discussed above, Applicant respectfully submits that Laksono does not disclose “reserving (91) a predetermined amount of bandwidth in [one or more multiplexers (21-24) of a node group] to future transcoding.”

The cited Levesque and Krause references fail to overcome the deficiency of Laksono in that neither Levesque nor Krause shows or suggests the above-mentioned limitations.

Moreover, because Laksono is an **improper basis** for rejecting Applicant’s claims, the combination of Laksono with Levesque or with other prior art references is also an **improper basis** for rejecting Applicant’s claims under 35 U.S.C. § 103. Laksono teaches away from “routing one or more subsequent new video sessions through a central transcoder” as recited by Applicant’s independent claims 1, 20, and 24 and teaches away from “performing transcoding or compression on a channel after all unreserved bandwidth of a multiplexer is allocated” as recited by Applicant’s claim 9. “A reference may be said to teach away when a person of ordinary skill, upon reading the reference, would be discouraged from following the path set out in the reference, or would be led in a direction divergent from the path that was taken by the applicant.” *In re Kahn*, 441 F.3d 977, 990 (Fed. Cir. 2006) (quoting *In re Gurley*, 27 F.3d 551, 553 (Fed. Cir. 1994)). Laksono teaches away from “routing one or more subsequent new video sessions through a central transcoder” as recited by Applicant’s claims 1, 20, and 24 and “performing transcoding or compression on a channel after all unreserved bandwidth of a multiplexer is allocated” as recited by Applicant’s claim 9 because Laksono offers the transcoding option only at an “increased fee.” See Laksono, paragraph [0021]. Laksono suggests that transcoding is inherently disadvantageous, because Laksono suggests offsetting the disadvantages of transcoding by the benefit of an “increased fee,” and thus Laksono teaches away from Applicant’s claimed limitation of routing one or more subsequent new video sessions through a central transcoder or performing transcoding after all unreserved bandwidth is allocated. Therefore, even if Laksono were combined with Levesque, Krause, or other prior art references, Applicant respectfully submits that Laksono **fails to provide a basis** for a rejection under 35 U.S.C. § 103, at least because Laksono teaches away from transcoding.

Conclusion

Claims not specifically mentioned above are allowable at least due to their dependence on an allowable base claim.

In light of the arguments presented above, it is respectfully submitted that all pending claims are in condition for allowance. Reconsideration and withdrawal of the final rejection of the claimed invention is respectfully requested.

Respectfully submitted,

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